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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JOANNE KOTLER, Individually and as  
Administratrix of the Estate of  
GEORGE P. KOTLER,

Plaintiff,

8 v. Civil Action  
No. 86-0810-S

9 THE AMERICAN TOBACCO COMPANY,  
10 PHILIP MORRIS, INC. and  
LIGGETT GROUP, INC.,

Defendants.

12 BEFORE: Honorable Walter Jay Skinner

13 Held At:

14 John W. McCormack  
15 Post Office and Courthouse  
16 Boston, Massachusetts  
17 Friday, March 2, 1990  
18 9:05 a.m.

19 DORIS M. JONES & ASSOCIATES, INC.  
20 Professional Shorthand Reporters  
59 Temple Place  
21 Boston, Massachusetts 02111  
(617) 542-0039

MNAT 00013297

1 agree with me that it's there, that would have been  
2 a very easy thing.

3 THE COURT: Sometimes the simple  
4 thing works, like saying do you recognize this  
5 fellow as an authority, he says yes, once you do  
6 that it's so easy, you don't have to go back around.

7 MS. LUMSDEN: It doesn't matter.  
8 Thank you.

9 (Whereupon, a recess was taken from 10:56  
10 to 11:15 o'clock a.m.)

11 MR. LANE: The Defendant would like  
12 to call Professor Graham to the stand.

13 THE CLERK: Please raise your right  
14 hand.

15

16 PROFESSOR OTIS GRAHAM,  
17 having been first duly sworn, was examined and  
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LANE:

21 Q. Would you please state your name?

22 A. Otis L. Graham.

23 Q. What is your profession?

24 A. I'm an American historian.

1           Q.    Where do you live, Mr. Graham?

2           A.    I live in [DELETED]

3           Q.    And where are you currently employed?

4           A.    I'm employed as a historian at the  
5   University of California, Santa Barbara.

6           Q.    What duties do you have at the University  
7   of California in Santa Barbara?

8           A.    I'm a professor of history, and I also  
9   direct the graduate program in public historical  
10   studies.

11          Q.    And as director of the graduate program,  
12   what are your responsibilities, Professor?

13          A.    I teach in that program, and I chair a  
14   faculty committee that makes curricular decisions,  
15   admissions decisions, basically manages.

16          Q.    For how many years have you been on the  
17   faculty of the University of California?

18          A.    I was on the faculty for fifteen years,  
19   from 1965 to 1980. I left there and went to the  
20   University of North Carolina at Chapel Hill. And I  
21   just accepted a reappointment to my original campus,  
22   and I've returned last year to UC Santa Barbara.

23          Q.    And how many years were you at the  
24   University of North Carolina?

1           A. Nine years.

2           Q. What were your duties there?

3           A. I was distinguished University Professor of  
4           History, which involves teaching, research, writing.

5           Q. How many years have you spent as a  
6           professional historian, Professor?

7           A. Twenty-seven years I believe it's become.

8           Q. Have you published any books or articles in  
9           the field of history?

10          A. Yes, I have.

11          Q. Perhaps you could describe for the jury the  
12          types of books and articles that you have published.

13          A. I've written or edited eleven books in  
14          American history, all of them in the modern period,  
15          and possibly -- I haven't counted my articles and  
16          essays, between 30 and 40.

17          Q. Where have those articles been published,  
18          Professor?

19          A. They are published in scholarly journals in  
20          history, one or two of them in journals of a more  
21          general interest, and in some of the essays are in  
22          books and anthologies in American history, all of  
23          them.

24          Q. When you say you've published books in the

1 modern period, what do you mean in your terms by the  
2 modern period of American history?

3 A. In my terms I have written on subjects  
4 which date from the 1890s, about the turn of the  
5 century, all the way to the present, a span of about  
6 80 years I regard as the modern or recent period.

7 Q. Could you tell the jury about your  
8 background in education?

9 A. I was an undergraduate at Yale University.  
10 I graduated with a BA doctor in 1957. I did my  
11 graduate work at Columbia University. I received it  
12 in May of 1961 and a Ph.D in 1966.

13 Q. What subject was your Ph.D in, Professor?

14 A. American history.

15 Q. Did you have any military experience?

16 A. I served three years in the United States  
17 Marine Corps., 1957 to 1960.

18 Q. Are you a member of any professional  
19 societies in the field of history?

20 A. Yes. I'm a member of the American  
21 Historical Association, the Organization of American  
22 Historians, which is the largest association of US  
23 historians, the Society of American Historians.  
24 Principally those.

1           Q. Have you received any awards or special  
2       recognition in your profession?

3           A. Yes, I have.

4           Q. Would you describe some of those to us?

5           A. I received a Guggenheim Fellowship, I was a  
6       fellow at the Center for Advanced Study in the  
7       Behavioral Sciences at Stanford University, another  
8       time I was a fellow at the Woodrow Wilson  
9       International Center For Scholars in Washington, DC,  
10      and I received a National Endowment for the  
11      Humanities Fellowship.

12       Q. Could you explain to the jury what is meant  
13      by "fellowship" or being a fellow?

14       A. A fellowship is a competitive award. When  
15      one wins a fellowship they call you a fellow. They  
16      call the female historians fellows, too. And it's a  
17      grant of money to allow you to take time off,  
18      sometimes as much as a year, to take from your  
19      teaching duties and administrative duties and to  
20      pursue your own scholarship.

21       Q. And is that the purpose for which your  
22      fellowship is?

23       A. I used all four of those to pursue my own  
24      scholarship.

1           Q. Professor Graham, what is a historian?

2           A. A historian is a person who by virtue of  
3           training and experience, education experience,  
4           reconstructs the past, conducts research, and the  
5           right materials in order to reconstruct the past to  
6           create a narrative account of that past and transmit  
7           it to the present for whatever use the  
8           contemporaries wish to make of it, taking care  
9           always to reconstruct the past in its own terms, not  
10           commit the errors of hindsight, and impose our own  
11           values on the past, but to reconstruct the past as  
12           it was.

13           Q. Does that create any problems for a  
14           historian dealing with recent events in American  
15           history?

16           A. I think that it does.

17           Q. In what respect?

18           A. The recent period is to me writing recent  
19           history, which is what I do. I recognize that all  
20           history is challenging, but writing recent history  
21           imposes challenges. I like challenges, but these  
22           are challenges. Modern history is very dynamic and  
23           fast moving. It is very complex. There is an  
24           avalanche of information.

1                   But most particularly modern people,  
2 twenty, 30, 40 years back, when we try to  
3 reconstruct what their lives were like, the choices  
4 they made, they appear like us, they wear the  
5 clothes we wear, they live in cities, drive  
6 automobiles, unlike the Roman times or the early  
7 American Colonial times, and we modern historians,  
8 and we try to reconstruct the recent past, are more  
9 tempted than even historians normally are. By their  
10 appearance of similarity we are tempted to impose to  
11 the mistakes of hindsight, to impose, to assume  
12 since they look as we do they think as we do and  
13 they have in their heads what we have in our heads.  
14 And we must always be careful working in the recent  
15 past to go back and painstakingly discover what they  
16 knew at the time.

17                 Q. Does that comment of yours, Professor, have  
18 any implication or significance with respect to  
19 tobacco smoking in history and cigarette smoking  
20 history in this country?

21                 A. I cannot think of another subject, there  
22 may be one, on which our views today are relatively  
23 passionately held, but they've changed so rapidly in  
24 the last twenty, 30 and 40 years on that particular

1       subject. And that subject then becomes a subject,  
2       it seems to me, when it is especially important not  
3       to assume that what we feel about that now and know  
4       about that now wasn't known and felt even twenty,  
5       30, 40 years back.

6           Q. Professor, what were you asked to do in  
7       this case for the Defendant?

8           A. I was asked to review the history of  
9       tobacco and the cigarette, and most particularly to  
10       reconstruct what the public was told and could read  
11       in the main channels of news and news media in this  
12       country on the relationship between cigarette  
13       smoking and lung cancer.

14           Q. And how did you go about doing this  
15       research, Professor?

16           A. Well, historians typically proceed on two  
17       tracks, and usually pretty much at the same time.

18                   We read the secondary sources. Secondary  
19       sources are sources written by somebody who was not  
20       there later on. A historian writes something that's  
21       a secondary source, is written by someone at a later  
22       time or a distant removed, and we read those in  
23       order to get the context to see what the questions  
24       were, to educate ourselves.

1                   But we particularly -- the core of our  
2 work is primary research, and primary materials are  
3 materials created and left behind by people at the  
4 time. You want to read the primary materials, they  
5 have the feel of authenticity. So I read in many  
6 secondary sources books and essays and I read in  
7 primary sources.

8                   Since my assignment was what the public  
9 knew from the news media and channels of news, I  
10 read national and local newspapers, magazines, and  
11 there are many of them.

12                  Q. After all the research and reading that  
13 you've described, Professor, did you reach an  
14 opinion about what the American public was hearing  
15 about smoking and lung cancer in the news media from  
16 approximately 1950 up until the issuance of the  
17 Surgeon General's Report in 1964?

18                  A. Yes, I did.

19                  Q. And could you tell the jury what  
20 conclusions you've reached with respect or as a  
21 result of your research?

22                  MR. NISSEN: Objection.

23                  THE COURT: What's the ground?

24                  MR. NISSEN: Foundation and compound,

1       your Honor.

2                   THE COURT: Overruled.

3       BY MR. LANE:

4       Q.   Would you tell the jury your conclusions,  
5       Professor?

6       A.   Beginning in nineteen -- in 1950, the  
7       history of the cigarette entered a new phase.  
8       Medical research reports began to be reported widely  
9       in the news media as news, along with an attended  
10      controversy generated by them and around them as to  
11      their interpretation and meaning and their  
12      implications.

13               These news reports beginning in 1950 and  
14      the attendant controversy about them continued  
15      through the period of my research from 1950 to the  
16      Surgeon General's Report in 1964.

17       Q.   We have had evidence in this case starting  
18      in 1964 with the issuance of the Surgeon General's  
19      Report which has been discussed in this trial with  
20      some frequency, Professor.

21               Did you examine the publicity or news  
22      coverage attendant to the release of the 1964  
23      Surgeon General's Report?

24       A.   Oh, yes, yes, I did.

1 Q. And perhaps with the help of some guides  
2 here we might be able to demonstrate some of this.

3 (Pause.)

4 BY MR. LANE:

5 Q. Would you come forward, Professor, if you  
6 could, and first of all tell the jury what types of  
7 articles and news media you examined?

8           A.    Well, I examined national newspapers and  
9   large local newspapers, and I examined national  
10   magazines that are news magazines which would carry  
11   news about events.

12 Q. Do you know the date that the 1964 Surgeon  
13 General's Report was issued?

14 A. It was issued on January the 11th, 1964.

15 Q. And from your readings, do you know the  
16 circumstances under which it was released?

17       A.    It was rather dramatic, in fact.  The  
18   Surgeon General called a Saturday news conference,  
19   there's a lot of rumors why he did that.  He held it  
20   in a large auditorium in the state department.  They  
21   closed the doors on the reporters and wouldn't let  
22   the reporters in for two hours.  They briefed them  
23   on this report, which you know is a thick volume,  
24   and there were 200 reporters that showed up there,

1 indicating the importance of the events as far as  
2 the news media was concerned, and they opened the  
3 doors and the news went out at that time. That's a  
4 Saturday about noon.

5 Q. And did you examine whether or not news  
6 coverage of that release by the Surgeon General  
7 occurred on the same day?

8 A. Well, the Surgeon General wanted it to hit  
9 the Sunday papers, but he hit the Saturday papers in  
10 some cases. In fact, here in Boston one Saturday  
11 afternoon they must have worked late on the paper,  
12 and a Boston paper covered the report on a Saturday  
13 afternoon.

14 Q. Let me show you this posterboard, if you  
15 will, and could you tell us what that is, Professor  
16 Graham?

17 A. That's the Boston Traveler for January the  
18 11th. They didn't wait until the next day. And  
19 it's a front page story, "Government Report Says  
20 Cigarette Smoking Is A Health Peril." They are  
21 summarizing the points of this report. "The risk of  
22 lung cancer increases the longer you smoke and the  
23 more cigarettes you smoke in a day, it lessens if  
24 you quit smoking. Smoking cigarettes is a health

1 hazard that calls for corrective action and is a  
2 major cause of lung cancer and other death dealing  
3 diseases especially in men."

4                   They call it a Blue Ribbon Federal Panel.

5                   It was a panel of ten distinguished medical  
6                   scientists that had been put together with the  
7                   agreement of all groups involved, and they've worked  
8                   for about eighteen months on it.

9                   Q.    This was the first report so far as you  
10                  could determine in the Boston press, is that  
11                  correct?

12                  A.    There couldn't have been an earlier  
13                  report. That's the Saturday in which it was. They  
14                  kept this report very quiet, almost secret, nothing  
15                  was leaked about the men working.

16                  Q.    Did you check the press coverage with  
17                  respect to the Sunday papers in Boston, Professor?

18                  A.    I checked in Boston as I checked around the  
19                  country for the Sunday reports, and it hit  
20                  everywhere.

21                  Q.    Showing you these, this next -- let's put  
22                  up this one first. I'm showing you this display,  
23                  Professor.

24                  What is that?

1           A.    That's the Boston Advertiser, Sunday paper,  
2 and it's now January the 12th, and it's again the  
3 Blue Ribbon Federal Panel, Smoking Harmful, and they  
4 a heavy US drive, cigarettes, lung cancer caused,  
5 it's the same news and same points are made here.  
6 They go over on another page.

7           Q.    The other page I'm showing you now, is that  
8 correct?

9           A.    That's the second page. Comment about  
10 filters, pictures of all the people involved and the  
11 summary of the news, and, in fact, it went over on a  
12 third page.

13           Q.    That's what these materials are at the  
14 bottom of this display, is that right?

15           A.    That's the account that was carried in the  
16 Advertiser and started on the front page, so they  
17 gave it quite a play.

18           Q.    Did you happen to notice whether there was  
19 coverage in the Boston Globe, Professor?

20           A.    There was coverage in the Boston Globe and  
21 the Boston Herald. There weren't any papers that  
22 missed the story. They all treated it as a big  
23 story.

24           Q.    Here's one you might have to help me with.

1      Perhaps we can set this up just on the ground.

2                    In this large report, can you tell the  
3                    jury what we are looking at?

4                    A.    We're looking at all the pages devoted in  
5                    that paper on that day to this story, and as you can  
6                    see, it's eight.

7                    Q.    Which paper is that?

8                    A.    This is the Boston Herald, Sunday Boston  
9                    Herald. They start on the front page.

10                  Q.    Sunday, January 12th, 1964?

11                  A.    Yes.

12                  Q.    Is that correct?

13                  A.    Yes.

14                  Q.    How many pages were devoted to the story of  
15                  the release of the Surgeon General's Report?

16                  A.    It's not every piece of every page, but it  
17                  occupied eight pages. It goes to here, Cigarette  
18                  Goes For Action, it still has headlines. They are  
19                  headlining as it goes. They summarize the report in  
20                  its own light. It's sort of a text of the US  
21                  Panel's report there, so you can read it for  
22                  yourself or you can read the highlights.

23                  And then they keep carrying headline on  
24                  it, so you can hardly not know that you're still

1 staying with the story. They carry the headline all  
2 the way to the end.

3 Q. Do you know how these pages run in order,  
4 Professor?

5 A. I believe they run here, then you go to  
6 page 26, 27, 28, 29, 30, 31, 32.

7 Q. Eight pages?

8 A. Yes.

9 Q. Thank you so much.

10 In addition to the coverage which you have  
11 shown us in the Boston press, did you make any  
12 investigation as to whether it was covered in other  
13 newspapers of the United States?

14 A. Oh, yes, it was.

15 Q. And did you make any investigation as to  
16 what coverage there was in the national magazine  
17 media?

18 A. Well, it was covered in all of the national  
19 papers that I checked. I did not find a paper where  
20 this wasn't a front page story. It was obviously  
21 picked up. It was picked up in the national news  
22 magazines and given a very big play. You saw in  
23 many places the Surgeon General's picture. Maybe  
24 some people had never seen the Surgeon General of

1 the United States at that time, but his picture was  
2 all over the country with this book.

3 Q. Why don't you take the stand again,  
4 Professor.

5 (Pause.)

6 BY MR. LANE:

7 Q. You mentioned earlier in your testimony  
8 that -- by the way, one last question, I should have  
9 shown it to you, let's do it this way and save  
10 time.

11 Did you check out the Boston Globe later  
12 in the year with respect to any coverage of the  
13 story of the breaking of the news, if you will, of  
14 the Surgeon General's Report?

15 A. My search method was to look at everything  
16 that had to do with smoking, cigarette smoking, lung  
17 cancer, and health, and so in that research  
18 methodology I naturally came upon toward the end of  
19 the year. I didn't know what I'd find.

20 As I went through the end of the year, I  
21 found an item, and the newsmen pick year's top  
22 stories, the Presidential election of '64 was a top  
23 story, but among the top stories was the Surgeon  
24 General's Report that made their ranking of the top

1 ten stories, "smoking reports, cigarette smokers got  
2 the news they feared but expected, on January 11th  
3 the report of the Special Advisory Committee for the  
4 Public Health Service was released."

5 Q. This was in the Boston Globe?

6 A. In the Boston Globe at the end of the year.

7 Q. I'd like to go back to the beginning of our  
8 story. I think we've shown something of the end,  
9 and let's talk about 1950. .

10 What research did you do to cover the year  
11 1950 and thereafter?

12 A. To cover the year 1950 and thereafter?

13 Q. And the following years.

14 A. Well, as I said, I polled the major  
15 channels of national newspaper and magazine opinion  
16 at that point as far as the story went, and as I  
17 said it went through until 1964.

18 Q. And in connection with the year 1950,  
19 Doctor, can you describe to us, for example, any  
20 common heads of news dealing with the subject -- or  
21 comprehensive heads dealing with the subject of  
22 cigarette smoking and lung cancer?

23 A. I found several things in 1950. I would  
24 say that the best coverage, that is the story that

1       most -- that explained most clearly to me, and I  
2       think would explain most clearly to anyone, why 1950  
3       is an important year, why this thing is new.

4               The best story there is what came at the  
5       end of the year in Collier's magazine account, and  
6       it is of special interest.

7               MR. NISSEN: Your Honor, we object.

8               THE COURT: What grounds?

9               MR. NISSEN: There's no evidence that  
10       Mr. Kotler ever read this magazine.

11               THE COURT: I don't think they have  
12       to do that under the rules. I think the issue is  
13       what was generally known to the public, and I  
14       suppose all dissemination is at least admissible.  
15       Whether it's persuasive or not is another question.

16       A. Some of the -- maybe some of you won't be  
17       familiar with Collier's magazine, but Collier's  
18       magazine had a circulation in the 1950s of nearly  
19       four million, which means it goes into households  
20       and stores and offices.

21               And this article, I'd like to quote to you  
22       from parts of it, because it's the end of the year,  
23       it gives you a good sense of why that year -- the  
24       significance of that year with regard to the

1      emergence of this issue.

2              It's entitled Don't Smoke Unless You Like  
3      It. "For more than 400 years, ever since the first  
4      paleface was lulled toward a treaty by an Indian  
5      peace pipe, tobacco has been decried as a moral and  
6      physical menace. Yet all through these centuries an  
7      ever growing portion of mankind, and more recently  
8      of womenkind, has ignored these cries and found  
9      comfort in the glowing bowl of a pipe, solace in the  
10     delicate aroma of a cigar, and an outlet for nervous  
11     tension in a few quick puffs on a cigarette. That's  
12     the history of 400 years. Recently, however, the  
13     ranks of the anti-tobacco forces have been swollen  
14     by new recruits. Serious scientists and physicians  
15     have solemnly reported the results of intensive  
16     research in authoritative medical journals. These  
17     studies, if only because of their source, cannot be  
18     laughed off as were the denunciations of the filthy  
19     weed --" that's in quotations because it's a  
20     familiar phrase applied to tobacco by tobacco's  
21     enemies all the way back -- by the wild-eyed soap  
22     boxers of generations past. Newspapers, the radio  
23     and television have picked up these reports and  
24     spread them broadcast condensing and oversimplifying

1 them with the ifs, ands and buts omitted. They have  
2 made smoking look to many like a dangerous habit  
3 indeed."

4 Now, if your eyes are good you can see  
5 what the structure of this article is. They start  
6 with these medical studies that have changed the  
7 climate, and of course they start with what I  
8 discovered to be probably the first of these new  
9 epidemiological studies by Doctor Ernst Wynder and  
10 Evarts Graham. That's a study published in May of  
11 this year, and they summarize it, the results of  
12 that, but then after that summarize that they turn  
13 to those who dispute it, and that happened the same  
14 year very quickly.

15 And, in particular, they were impressed by  
16 Doctor Austin Deepert, he's chief of the Cancer  
17 Control Branch of the National Institutes of Health,  
18 pointed out in a recent letter to the Journal of the  
19 American Medical Association, that's the same place  
20 where the research was published, quote, "many  
21 investigators still maintain that this increase is  
22 merely apparent and is the result of a shift in the  
23 age composition of our population in recent decades,  
24 better diagnostic facilities, and a greater

1 awareness of the medical profession for this  
2 particular cancer." So this scientist is explaining  
3 this data in a different way.

4 "Others cited as skeptical of the  
5 Graham/Wynder theory." This is something from  
6 Doctor Deepert, he had something else to say.

7 They are impressed also by the  
8 disagreement by a Doctor W.C. Huper of the National  
9 Cancer Institute, that's federal science. Regard  
10 the recent insist on smoking as the cause of cancer  
11 of the lung as dangerously one sided.

12 And there are other -- they refer to other  
13 earlier allegations and charges. This is by Doctor  
14 Raymond Pearl in 1938, but many statisticians find  
15 serious flaws in Pearl's reasoning. This article, I  
16 like it because it displays the rythym --

17 THE COURT: Professor, I don't think  
18 we want to get into your views on it.

19 BY MR. LANE: )

20 Q. Just stick with what you found.

21 A. What I found. Well, here at the end they  
22 summarize the medical consensus.

23 Q. Would you describe that? What are they  
24 referring to, Professor?

1           A. They say at the end of the article,  
2       "perhaps the best and most judicious summary of the  
3       most generally accepted medical viewpoint is to be  
4       found in an editorial published a few years ago in  
5       the Journal of the American Medical Association."  
6       Quote, "actual surveys indicate that the majority of  
7       physicians themselves smoke cigarettes. From a  
8       psychological point of view more can be said in  
9       behalf of smoking as a form of escape from tension  
10       than against it. There does not seem to be a  
11       preponderance of evidence that would indicate the  
12       admonition of the use of tobacco as a substance  
13       contrary to public health."

14                   THE COURT: Who wrote this article?

15                   THE WITNESS: The man is Albert Q.  
16       Mazelle, sir.

17                   THE COURT: This represented his  
18       opinion, I take it?

19                   THE WITNESS: Yes, sir.

20                   MR. LANE: We're presenting what was  
21       coming to the American public.

22                   THE COURT: I understand, and what  
23       was coming to the American public according to that  
24       was the opinion of Mr. Mazelle that you've just

1 read?

2 THE WITNESS: And the quotations from  
3 the various scientists.

4 THE COURT: All right.

5 BY MR. LANE:

6 Q. Thank you.

7 (Pause.)

8 BY MR. LANE:

9 Q. In addition to the Collier's article which  
10 you've just discussed with us, Professor, was there  
11 other media coverage given to the so-called  
12 Wynder/Graham report which had come out in 1950?

13 A. Yes, there was.

14 Q. And perhaps you could describe to us the  
15 nature of that coverage of the Wynder/Graham  
16 report.

17 A. Yes. It began at once in the first month  
18 in January. The Reader's Digest is a -- during this  
19 period the Reader's Digest, I have an old copy, it  
20 hasn't changed much in its appearance, was in the  
21 1950s the number one leading journal by  
22 subscription. It was much larger than any other  
23 journal in the country. Its subscription lists in  
24 1950 were over ten million, and it grew across the

1 decade to over twelve million.

2                   And the Reader's Digest had a habit of  
3 running articles on tobacco. In January they ran an  
4 article on How Harmful Are Cigarettes.

5                   Q.    Was there reference in that to the  
6 Wynder/Graham study?

7                   A.    There was. You will notice that the  
8 Wynder/Graham study is published in May of the year,  
9 and this is published in January.

10                  But Wynder and Graham had given talks at  
11 professional meetings, and those talks were picked  
12 up by the author of this article and included as  
13 news.

14                  Q.    In addition to the coverage of the  
15 Wynder/Graham report, was there any commentary in  
16 that Reader's Digest by any other health officials  
17 or health observers?

18                  A.    Yes. The article is initially not about  
19 cancer. It says How Harmful Are Cigarettes, and it  
20 starts, "effects the heart, effects the stomach,"  
21 but they got -- the cancer issue and the  
22 Wynder/Graham studies were cited there. And then  
23 they wound up their discussion of the relationship  
24 between cigarette smoking and lung cancer with a

1 quotation from Doctor Charles Cameron who was at  
2 that time the medical director of the American  
3 Cancer Society.

4 Q. As reported, what was his commentary?

5 A. As reported, the reporter asks "will  
6 cigarettes induce cancer?" And they quoted Doctor  
7 Cameron as saying "for every expert who blames  
8 tobacco for increasing cancer of the lung there is  
9 another who says that tobacco is not the cause."  
10 And then that's the end of the quotation.

11 And then the reporter adds, the ACS  
12 formally states, or maybe this is a summary of  
13 Doctor Cameron's statements, "the ACS," American  
14 Cancer Society, formally states "there is no answer  
15 generally accepted as scientifically valid."

16 Q. Following this January edition of the  
17 Reader's Digest, did the Reader's Digest later  
18 return attention to that article in that same year?

19 A. Yes, they did.

20 Q. When was that?

21 A. That was interesting, because in April the  
22 Reader's Digest returned to the issue, How Harmful  
23 Are Cigarettes had been the January story, they had  
24 a special encore section, and they opened it with

1 these words.

2                   The article on this subject, How Harmful  
3                   Are Cigarettes, in the January Digest aroused more  
4                   discussion and approval than any recent magazine  
5                   feature. And so as a result of that, recognizing, I  
6                   suppose, that they are on to something the public  
7                   wanted to hear more about, they ran two articles on  
8                   how to quit smoking.

9                   MR. NISSEN: Objection.

10                  THE COURT: If you could cut out the  
11                  editorial comments, we could go along, professor.

12                  BY MR. LANE:

13                  Q. In addition to the Reader's Digest coverage  
14                  which you've just described, were there also  
15                  coverages of the Graham/Wynder report in newspapers,  
16                  in the newspapers?

17                  A. Yes, there were.

18                  Q. Can you give us a brief description of  
19                  that, if you would?

20                  A. The Graham/Wynder report was covered in the  
21                  New York Times, it was covered in Newsweek magazine,  
22                  it was covered in science digest, it was covered in  
23                  the Boston Herald. Those were the primary ones that  
24                  I recall.

1                   These are early '54, and they are  
2 published in the Boston Traveler on the 14th and  
3 15th of January.

4                   Q.    We'll show these briefly.

5                   I'm showing you, Professor, just point out  
6 quickly for the jury, could you tell the jury what  
7 this display is?

8                   A.    Well, it is the Boston Traveler, January  
9 the 14th.

10                  Q.    Nineteen fifty-four?

11                  A.    Nineteen fifty-four. It's, you can see the  
12 title, Can Smoking Cause Lung Cancer. You can see  
13 that they print right here "no conclusive proof,"  
14 and then they promise to give you both sides.

15                  And as you can see, this is not -- this  
16 story is not an UP or a UPI or an AP, a wire service  
17 story, a national story like most of them are. This  
18 is written by a staff reporter of the Boston  
19 Traveler who took the time to build this story and  
20 put it together.

21                  Q.    Who does he mention in the story, if you  
22 will, on the pro side, suggesting proof of the link  
23 between cigarette smoking and lung cancer?

24                  A.    He starts with a Doctor E. Kyler Hammond, a

1           Q. After 1950, Professor, what was the next  
2 significant medical event that received coverage in  
3 the newspapers, or the media generally?

4           A. In 1950 did you ask?

5           Q. After 1950.

6           A. After 1950.

7                         The next major medical research report  
8 that broke into the news would be a British study, a  
9 1952 British study by the authors Doll & Hill, it  
10 was published in the British Medical Journal.

11           Q. Did that receive any coverage in the Boston  
12 local press?

13           A. Yes. As I recall that was reported in the  
14 Herald. It was reported in the New York Times and  
15 in other places, Time Magazine. Yes, it was  
16 reported in the Boston Herald.

17           Q. And with respect to the coverage in the New  
18 York Times, did you take a look at that?

19           A. Yes, I did.

20           Q. And could you just give a brief description  
21 of the New York Times' coverage of the discussion of  
22 the Doll & Hill report that had come in in 1952?

23           A. Yes. They covered a news story on the 12th  
24 of December, 1952. The headline was British Study

1       Ties Cancer To Tobacco, and it reported briefly  
2       their findings from the study of 1,400 British male  
3       doctors. They quoted the report somewhat more fully  
4       than elsewhere, and you could read the quotation  
5       "they do not contend that the case against tobacco  
6       has been completely proven. It seems likely that  
7       some agent other than tobacco is at least partly  
8       responsible for the excess mortality in towns." And  
9       the report is quoted as having suggested perhaps  
10      chimney smoke or auto exhaust.

11       Q. After the publication of material or  
12       information with respect to the Doll/Hill study,  
13       Doctor, what next, in this development of medical  
14       information coming in, what major events of medical  
15       information came after the Doll/Hill study that was  
16       covered in the press and the media?

17       A. In my judgment, the major significant news  
18       moments included statements, important statements by  
19       respected officials, scientists and others, and that  
20       would include a statement, for example, such as  
21       reported in the New York Times in April, the 30th of  
22       1953, in which a Doctor John Heller identified as a  
23       director of the National Cancer Institute says "any  
24       connection between heavy smoking and lung cancer has

1 not been definitely established to our  
2 satisfaction." He is reported as having made that  
3 statement in house testimony at the House of  
4 Representatives in Washington.

5 Q. What other developments, if any, Doctor,  
6 were there in 1953?

7 A. In 1953 in December the 9th, at a New York  
8 Dentists' meeting, there was a report, it was widely  
9 reported, New York Times is the report that I have  
10 in front of me, but it was reported in the Boston  
11 Globe and the Boston Herald and in Life Magazine,  
12 three papers were given by scientists, when Wynder  
13 and Graham were giving a paper again, they  
14 reappeared and they gave a paper their -- I'm  
15 quoting from the story, "the correlation between  
16 smoking and cancer was stated in unusually strong  
17 terms by leading medical specialists at the 29th  
18 Annual Greater New York Dental Meeting." The story  
19 summarizes what Wynder and Graham had to say, and a  
20 Doctor Grace Roth of the Mayo Foundation, and a  
21 Doctor Alton Ochsner from New Orleans.

22 Q. In the coverage, which you mention again  
23 Wynder and Graham and Ochsner, what other medical  
24 reports were coming in in the end of 1953 in the

1 public press as you determined, Professor?

2 A. Right at the end of '53 there began to be  
3 reported experiments on mice, and particularly  
4 accessible would be Life Magazine's coverage,  
5 because there are so many pictures, but my studies  
6 were summarized in Time Magazine and elsewhere.

7 Q. Who was performing these mice study  
8 reports, Professor?

9 A. My notes show that Doctor Evarts Graham,  
10 who had done the epidemiological studies that  
11 frequently were noted, and also done some mice  
12 studies, painting, distillants of tar on the backs  
13 of mice, and reporting getting cancer in those mice  
14 at a rate of about 40 percent.

15 Q. And following the report of these mice  
16 studies in the media, if you will, what developments  
17 occurred as reported in the press?

18 A. Well, there had been so much in the news in  
19 1950 that Boston Traveler ran two stories in  
20 January. These are not reports of medical research,  
21 they are summary articles in which the reader can  
22 find a summary of what had gone on the year before.

23 Q. In '53?

24 A. In '53.

1 name that will appear very, very often in subsequent  
2 reports. Doctor Hammond is statistical research  
3 director of the American Cancer Society, and they  
4 quote from some evidence he's getting from a rather  
5 major study they had underway during that year and  
6 the year after.

7 He quotes from it, he mentions the studies  
8 of Evarts, Graham and Ernst Wynder, who are getting  
9 to be familiar names, he quotes Doctor Alton  
10 Ochsner, head of surgery at Tulane Medical Center,  
11 and Doctor J.M. Easenberg of the Chicago Medical  
12 School.

13 Then he quotes the fact that -- at least  
14 prints that the US Public Health Service experiment  
15 did not confirm the mice experiments of Graham and  
16 Wynder. Then he quotes Doctor Hammond as saying  
17 that the disadvantages of this method are manifold.

18 Q. Which method are they referring to? Are  
19 they talking epidemiological studies?

20 A. If you read this you can see they are  
21 referring to epidemiological studies that are  
22 retrospective. The Graham and Wynder study, most of  
23 the studies of these years were retrospected.  
24 Doctor Hammond had underway a prospective study.

1 MR. NISSEN: Objection.

2 BY MR. LANE:

3 Q. As reported in the press?

4 A. As reported here. I've started to quote  
5 it. Perhaps I should quote it.

6 Q. I don't think we're going to have time to  
7 get all into it, but was he critical of  
8 retrospective studies?

9 A. He was critical. Some statisticians  
10 believe it leads to erroneous conclusions more often  
11 than to correct.

12 Q. Then on the next day, Professor, was there  
13 a second phase of that article?

14 A. This is the second part.

15 Q. When was that published?

16 A. The next day, January 15th, 1954.

17 Q. Were any other persons involved with public  
18 health referenced in that second day's article?

19 A. It is not very easy to read the print here,  
20 but there are two names that I can see. Doctor  
21 Hooper of the National Cancer Institute is cited as  
22 a doubter, Doctor Paul Cotin of the University of  
23 Southern California is cited here as reporting his  
24 research demonstrates that it is exhaust fumes from

1 gasoline that he thinks is the primary factor.

2 Q. In addition to the articles in the trial  
3 period, if you will, in 1954, can you tell us what  
4 the news coverage was demonstrating with respect to  
5 the suggestions or the research or medical  
6 suggestion that cigarette smoking and lung cancer  
7 are related?

8 A. There's a March event that is reported that  
9 that seems significant. In the New York Times  
10 there's a story in the headlines, the heading is  
11 Smoke Link Seen By Cancer Society, and they quote  
12 the report statement made by the American Cancer  
13 Society, quote, "evidence to date justifies the  
14 suspicion that cigarette smoking does to a degree as  
15 yet undetermined increase the likelihood of  
16 developing cancer of the lung."

17 Q. At some time was there any coverage with  
18 respect to any other personages on the subject of  
19 cigarette smoking and lung cancer, I mean medical  
20 personages?

21 A. Yes, there was throughout the year.

22 I would call your attention to a June  
23 story, again this one in the New York Times, in  
24 which it is reported that "the American College of

1 Chest Physicians refused yesterday to single out  
2 cigarette smoking as a suspected cause of lung  
3 cancer."

4 Q. Where was that article, Doctor?

5 A. That's in the New York Times in June.

6 Q. With respect to the rest of the year of  
7 1954, did you come across any major -- just why  
8 don't you recount the year 1954, bring us to the end  
9 of the year 1954.

10 A. The year 1954 is filled with news  
11 accounts. Possibly the anchoring, the central event  
12 of the year is the first formal report of Doctors  
13 Hammond and Horne who are making their study for the  
14 American Cancer Society, and they formally make  
15 their first report, they made it in San Francisco at  
16 the annual meeting of the American Medical  
17 Association.

18 Q. And was that covered in the press, Doctor?

19 A. Very widely covered. Time Magazine has a  
20 good coverage. But it was covered in the  
21 newspapers. The Boston American had a story at the  
22 top of the page.

23 Q. Was that the first -- did the American  
24 Cancer Society take a position at that time?

1           A. They took no position at that time. This  
2 was simply the report of the first news, the first  
3 conclusions that Hammond and Horne had been able to  
4 reach. They are quoted here, and there's a  
5 quotation from Doctor Cameron commenting on the  
6 findings.

7           Q. What was Doctor Cameron's comment?

8           A. Doctor Cameron, who is the medical director  
9 of the American Cancer Society.

10          Q. As reported?

11          A. As reported said, quote, "solid citizens  
12 would give cool thought to the matter and would  
13 presumably conclude that the hazards of smoking do  
14 not appear to differ significantly in degree from  
15 lots of other calculated risks to which modern man  
16 exposes himself."

17          Q. Were there any other comments by medical  
18 personnel during that year, 1954, that you found to  
19 be of significance as reported in the popular media?

20          A. Yes. The controversy had a side that was  
21 expressed very well here. For example, in Newsweek  
22 Magazine in December of that year under the heading  
23 "Smoke?" a Doctor William Reinhoff, said to be a  
24 lung cancer specialist at Johns Hopkins Hospital, is

1 quoted as saying, this is Newsweek Magazine, "go  
2 ahead and smoke all you want," and then the reporter  
3 continues in a speech before the Baltimore Rotary  
4 Club, he called the findings that connected smoking  
5 and lung cancer "silly and irresponsible." Reinhoff  
6 went on, "many other things have become prevalent  
7 besides cigarettes. We might as well blame lung  
8 cancer on nylon or industry. Chimney or bus exhaust  
9 pipes emit more cancer carrying substances than you  
10 will find in cigarette smoking. Only recently  
11 Baltimore doctors examined the records of a convent  
12 in Canada and found that nuns who do not smoke have  
13 a higher lung cancer rate than the average person."

14 Q. And in addition to that article, Doctor,  
15 were there any other major news stories or media  
16 coverage, if you will, of events or the controversy  
17 with cigarette smoking and lung cancer in 1954?

18 A. Yes. At the end of the year Harper's  
19 Magazine ran a story by Leonard Ingle, said to be an  
20 impartial experienced medical writer, Do We Have To  
21 Give Up Smoking, a summary of the situation as he  
22 saw it.

23 Q. Was that the title of the article?

24 A. Do We Have To Give Up Smoking.

1           Q. And what conclusions does this writer for  
2 Harper's Magazine come to?

3           A. He summarized the evidence on the one side,  
4 he cited Wynder/Graham and summarized it, Hammond  
5 and Horne, Doll & Hill, the mice studies, then he  
6 turned and under the heading Evidence On The Other  
7 Side he said a sizable body of cancer workers feel  
8 that evidence against cigarettes today is  
9 unconvincing, and that an explanation of the rise in  
10 lung cancer must be sought elsewhere, and for that  
11 opinion he cited Doctor William Hooper of the  
12 National Cancer Institute, one other doctor, and  
13 then under the heading "what does it all add up to,"  
14 he said this in summary. "This summary on both  
15 sides in the cigarette and lung cancer controversy  
16 leads to two observations. First, there is a  
17 statistical association between cigarette smoking  
18 and cancer of the lung. But the association is so  
19 far largely statistical. At any rate, the  
20 experimental and clinical evidence has not yet  
21 convinced physicians and scientists who include some  
22 of the world's most experienced cancer  
23 investigators."

24           Q. In addition to reviewing the media, press,

1       magazines on this subject, did you make any  
2       investigations to find out what knowledge, if any,  
3       was actually being received by the American public?

4       A.    Well, it came to my attention in my reading  
5       that there was a -- there were gallop poll results  
6       as to public opinion.

7       Q.    And did you find in your researches any  
8       gallop poll reports for the year 1954?

9       A.    Yes, I did.

10       Q.    And can you tell the jury what gallop poll  
11       results you found with respect to knowledge of this  
12       controversy or knowledge on the subject as taken or  
13       measured by the gallop organization?

14                    MR. NISSEN: Objection.

15                    THE COURT: May I have that question  
16       again?

17                    (Whereupon, the reporter read back the  
18       pending question.)

19                    THE COURT: I sustain the objection.

20       BY MR. LANE:

21       Q.    Doctor, in your research or in your work as  
22       a historian, do you rely on public opinion polls?

23       A.    Very often I do.

24       Q.    And have you relied in the past on results

1 of gallop polls to form judgments of historical  
2 significance for your writers?

3 A. Yes, I have.

4 Q. Did you rely upon the gallop poll in this  
5 instance to form an opinion to give to us today or  
6 to give us information about today?

7 A. I discovered in my research gallop poll  
8 results which reflected public opinion.

9 MR. LANE: I believe we can make an  
10 offer of proof.

11 THE COURT: If you have an offer of  
12 proof I'll hear you.

13 (Side bar conference.)

14 MR. LANE: If allowed to testify the  
15 witness will testify that he has gallop poll  
16 information for the year 1954. The question was  
17 asked by the gallop poll organization have you heard  
18 recently information to the effect that cigarette  
19 smoking causes lung cancer. That was the question  
20 proposed. And his answer would be that the gallop  
21 organization polled twice in 1954, and that in  
22 January or February, I can remember the date, the  
23 answer to that question was yes in 82 percent. And  
24 in June when polled again, the answer to the

1 question as posed was -- the result was 90 percent  
2 for the present poll, that had heard information  
3 recently to the effect that cigarette smoking was a  
4 cause of lung cancer.

5 I think that's relevant to the issue in  
6 this case so the jury can hear --

7 THE COURT: I think what's relevant  
8 is what's out there, and how many people actually  
9 heard it is not relevant. That's the question of  
10 what is the likelihood given this amount of  
11 information in the media that Mr. Kotler's in.

12 MR. LANE: This is the public that  
13 I'm addressing myself to.

14 THE COURT: I don't think so. I  
15 think the information has to be out and available to  
16 the public, how many people actually saw it.

17 I'm going to exclude it.

18 MR. LANE: Thank you, your Honor.

19 My rights.

20 THE COURT: Of course.

21 (End of side bar conference.)

22 THE COURT: The objection is  
23 sustained.

24 BY MR. LANE:

1           Q. After 1954, what poll to the American  
2        public did you discover as a result of your  
3        investigation?

4           A. Nineteen fifty-four was more filled than  
5        the year after, but 1955 did continue to present  
6        news and additional information and perspectives on  
7        the controversy.

8           Q. Can you give us a couple examples?

9           A. Yes. In August, for example, the New York  
10       Times quoted a criticism of the reports and comments  
11       upon the question of the possible link between  
12       smoking and cancer by a Doctor Joseph Berkson, a  
13       well-known medical, it says here, statistician who  
14       is head of the section of biometry and medical  
15       statistics of the Mayo Foundation in Rochester,  
16       Minnesota.

17           Doctor Berkson pointed to what he believes  
18       were the flaws in the statistical organizations of  
19       the two studies, one by the American Cancer Society  
20       and the other by Doll & Hill. These flaws, Doctor  
21       Berkson asserted, cast doubt upon the widely  
22       accepted proof that smoking and cancer, particularly  
23       lung cancer, are linked.

24           Q. This appeared the end of 1955?

1           A. This was in August.

2           Q. Going on, Professor, to 1956, can you tell  
3           us what significant events occurred, if any, with  
4           respect to this subject of cigarette smoking and  
5           lung cancer as displayed in the American press?

6           A. Yes. As I indicated, in 1955, there  
7           continued to be news about significant statements  
8           that were made, and there was, for example, in the  
9           New York Times in January of that year a story which  
10           has at the top of it Bad Air Is Called Top Cancer  
11           Cause, and that story, and then it says Federal  
12           Scientist Absolves Cigarettes Of Major Role In  
13           Disease Of Lungs, and then the story reports "a  
14           government authority said today that all available  
15           evidence clearly pointed to the contaminated air of  
16           America's industrial cities as the chief cause of  
17           lung cancer." And the author of that statement was  
18           reported as Doctor W.C. Huper of the National Cancer  
19           Institute.

20           Q. Following this January New York Times  
21           article, what other developments occurred as you  
22           discovered them in the year 1957?

23           A. Several very significant events. In March,  
24           the Boston Globe, for example, carried a story that

1 was reported very widely. It was under the headline  
2 New Study Says Smoking A Cause Of Lung Cancer. But  
3 it was actually not so much a new study as a report  
4 written by seven experts, and it was often  
5 categorized as the Seven Experts' Study.

6 Q. That's how it was characterized?

7 A. It was characterized as the Seven Experts'  
8 Report.

9 Experts, medical researchers, had been  
10 asked by the American Cancer Society, American Heart  
11 Association, to just study the other reports, and  
12 this story says, this is the Boston Globe, "a report  
13 by seven imminent scientists said that beyond  
14 reasonable doubt cigarette smoking is a cause of  
15 lung cancer."

16 Q. Following that -- by the way, did that  
17 story make other newspapers around the country?

18 A. It was very, very widely reported around  
19 the country.

20 Q. Was that an AP wire service story,  
21 Professor?

22 A. That is a wire story -- a wire service  
23 based story, and it was apparently not supposed to  
24 come out that March.

1 MR. NISSEN: Objection.

2 THE COURT: The last part about when  
3 it was supposed to come out is out.

4 BY MR. LANE:

5 Q. Following that story, what other story was  
6 devoted, if any, to the so-called Seven Experts'  
7 Report?

8 A. Doctors Hammond and Horne who were carrying  
9 on this ongoing study made another report, or other  
10 major new findings out of an ongoing, and they  
11 reported again in June as they had in 1954, and --

12 Q. What are you looking at for this?

13 A. I'm looking here at the Boston Globe, and  
14 this is from June the 5th, 1957, and it's headed  
15 Four Year Study Of Smoking Made By Cancer Society,  
16 and it's -- the sentence begins "heavy cigarette  
17 smoking speeds death seven to eight years before  
18 your time, a cancer researcher estimated today."  
19 That's E. Kyler Hammond and Doctor Daniel Horne.

20 Doctor Hammond declared a new thing which  
21 turned up in this final report, were that death  
22 rates dropped when men quit smoking. That story was  
23 in the New York Times, the Herald, Newsweek, Time  
24 Magazine and the New York Times ran an editorial

1 that said "the outlook is for continued controversy  
2 over the relationship between cigarette smoking and  
3 lung cancer."

4 Q. What else happened in 1957 of significance  
5 in your studies of research, Professor?

6 A. There was major coverage given to a  
7 statement by the Surgeon General of the United  
8 States in 1957.

9 Q. Would you describe that for us?

10 A. The Surgeon General is Leroy Bernie, and he  
11 issued a statement on the smoking and cancer  
12 question, quote, I'm quoting from Time Magazine,  
13 July 22nd, "there is an increasing and consistent  
14 body of evidence that excessive cigarette smoking is  
15 one of the causative factors in lung cancer, and  
16 there is a direct relationship between the incidence  
17 of lung cancer and the amount smoked."

18 Q. Following that event, that release, those  
19 stories you described, did Doctor Bernie appear in  
20 further stories in 1957?

21 A. Yes.

22 Q. Would you describe that situation for us?

23 A. Doctor Bernie's in the news just very  
24 shortly thereafter. He is reported as giving

1 testimony to Congress.

2 I'm looking here at the New York Times  
3 study of July 24th.

4 Q. We've done a display for this, and perhaps  
5 you could just briefly step forward and show this to  
6 the jury.

7 This on Wednesday, July 24th, 1957 in the  
8 New York Times?

9 A. That's correct.

10 Q. And would you tell us the New York Times  
11 coverage of these events?

12 A. You can see the headline Tar And  
13 Cigarettes, Lung Cancer Clue, Filter Value In Doubt,  
14 and Doctor Bernie is here, he's reported as  
15 attending with Doctor Heller and another official of  
16 the Department of Health, Education & Welfare. And  
17 "Doctor Bernie, the Surgeon General of the United  
18 States, declined today to recommend printing of  
19 warning labels on cigarettes," and he's quoted as  
20 saying -- if I'm standing in your way, I could  
21 probably read it from my copy.

22 Q. Why don't you do that?

23 A. I'm sorry about putting my body there.

24 Doctor Leroy Bernie, Surgeon General of

1 the United States, Public Health Service, quote, "we  
2 don't have sufficient evidence at this time of  
3 actual causative cancer agents in tobacco to take  
4 such a step, Doctor Bernie testified. The  
5 subcommittee chairman representative John Blatnick,  
6 Democrat of Minnesota, asked what the witnesses  
7 thought about labelling cigarettes like pills,  
8 taking only so many a day. Smiling, Doctor Bernie  
9 said that he didn't believe 'many of us read too  
10 much of the fine print on things we buy,' and he did  
11 not think it would do much good. He noted that I  
12 enjoy smoking myself and that the Public Health  
13 Service felt it should keep smokers informed of the  
14 findings, but could not go beyond that."

15 Q. Thank you.

16 We've now discussed some of '57,  
17 Professor. Where does the story go from there as  
18 you found it in your research? What followed this  
19 Bernie appearance before Congress in 1957?

20 A. Well, Doctor Heller had been at that, and  
21 he was -- there was a large interview with him in  
22 the US News & World Report in July.

23 Q. Could you just summarize the US News &  
24 World Report article or interview of Doctor Heller

1 as reported in US News & World Report?

2 A. Yes. The article is entitled What Is Known  
3 And Unknown, An Interview With John Heller,  
4 Director, National Cancer Institute. It is a  
5 lengthy interview. It goes on for eleven pages or  
6 so.

7 But the editors of the US News & World  
8 Report quoted his four major points, what they took  
9 to be his four major points.

10 Q. Why don't you report those to us?

11 A. You can't see them. I'll simply say them,  
12 because we made them short.

13 Q. Right.

14 A. This is the -- quotation marks are around  
15 it, from Doctor Heller, "we don't know why people  
16 get lung cancer," "chances of dying from lung cancer  
17 are almost as big as being hit by an auto," "heavy  
18 cigarette smoking is not the only factor in lung  
19 cancer," "data indicate moderate smokers less of a  
20 risk than a heavy smoker."

21 Q. Following this '58 article in the US News &  
22 World Report, what next of significance did you find  
23 based upon your researches and investigations?

24 A. I find that Doctor Heller was very busy

1 this year, and he's quoted again in July, this time  
2 in the Boston American, saying something different  
3 and additional. This is a story in Boston American  
4 in July 7th, the headline is US Awaits More Proof Of  
5 Cigarette Cancer Ties, and the story starts "the  
6 United States Government needs more evidence on the  
7 relationship between smoking and lung cancer before  
8 deciding whether to warn against cigarettes as the  
9 British Government has done. World cancer experts  
10 were told today by Doctor John R. Heller, director  
11 of the National Cancer Institute."

12 Q. Following that report, in accordance with  
13 your researches and investigations, what next of  
14 significance to the public have you found in the  
15 public media?

16 A. That was in 1958.

17 In 1959 in November toward the end of the  
18 year the Surgeon General, still Doctor Bernie,  
19 published an article in the Journal of the American  
20 Medical Association, according to this story, and I  
21 saw this story in several places. But the version I  
22 have here is November 27th, New York Times, writing  
23 in the Journal of the American Medical Association,  
24 "Doctor Bernie examined evidence of the relationship

1 of smoking to lung cancer. The Public Health  
2 Service, he concluded, believes that the following  
3 statements are justified by studies to date. One,  
4 the weight of evidence at present implicates smoking  
5 as the principal epidemiological (causative) factor in  
6 the increased incidence of lung cancer. Point two,  
7 cigarette smoking particularly is associated with an  
8 increased chance of developing lung cancer." That's  
9 November 27th.

10 Q. Of 1959?

11 A. Nineteen fifty-nine.

12 Q. That was published in the Journal of the  
13 American Medical Association?

14 A. The report says his report --

15 Q. You have a New York Times report saying  
16 that?

17 A. I have a New York Times report saying that.

18 Q. Following that news story on Doctor  
19 Bernie's statement, what next do you find in that  
20 connection?

21 A. I find that ten days later or two weeks  
22 later the New York Times, also the Boston Herald,  
23 carries a story Bernie Disputed On Cancer Study, AMA  
24 Questions Report Listing Smoking As Main Factor In

1 Lung Disease, and it continues, this is December the  
2 11th. "The Journal of the American Medical  
3 Association said today that there was insufficient  
4 evidence to warrant the assumption that cigarette  
5 smoking was the principal factor in the increase in  
6 lung cancer. In an editorial, the Journal  
7 questioned conclusions in a report by Doctor Leroy  
8 Bernie, Surgeon General of the United States,  
9 listing smoking as the main factor leading to such  
10 an increase."

11 Q. Following that editorial by the Journal of  
12 the American Medical Association in December of  
13 1959, what next of significance did you find in your  
14 research of this coverage of the subject of  
15 cigarette smoking and lung cancer?

16 A. The next major event allows us to jump  
17 ahead to 1952, and toward the end of that, at the  
18 beginning of that year, there were reports several  
19 places of the Royal College of Physicians in London  
20 issuing a report. In March the New York Times ran  
21 it this way. "War on smoking asked in Britain,  
22 Royal College of Physicians links cancer of lung to  
23 heavy cigarette use. The report said that health  
24 hazards associated with cigarette smoking were so

1 great that preventative steps should be taken  
2 promptly." This is March of '62.

3 Q. That's the New York Times?

4 A. Yes, it is.

5 Q. And what next happened after that?

6 A. The news media carried the following  
7 story. "The Public Health Service recommended to  
8 President Kennedy that a board be established to  
9 study possible links between smoking and certain  
10 diseases." This recommendation is reported in June  
11 of '62. It reports that the -- in March that  
12 British Royal College of Physicians made their  
13 report, it recommended to the president that a board  
14 be established. I know from my research that a  
15 board was established. It was the advisory board  
16 that served --

17 MR. NISSEN: Objection.

18 THE COURT: What?

19 MR. NISSEN: Object to the  
20 editorializing.

21 THE COURT: Sustained.

22 BY MR. LANE:

23 Q. Following those reports of the Royal  
24 College of Surgeons that reported in the New York

1 Times, did you find news articles that the Surgeon  
2 General had appointed an advisory committee?

3 A. Yes.

4 Q. And at some time, as we've discussed  
5 earlier in the testimony, the advisory committee to  
6 the Surgeon General released a report that we  
7 started our testimony here with today?

8 A. Yes.

9 Q. Which resulted in the press reports which  
10 you described in the very first of your testimony,  
11 is that correct?

12 A. Yes.

13 Q. Doctor, to do all this work and to do all  
14 this research, how many hours approximately did it  
15 take?

16 A. How many hours?

17 Q. Approximately.

18 A. Well, that's hard to say with exactitude,  
19 but I would say about perhaps 150.

20 Q. Now, are you charging us for your time here  
21 today?

22 A. Yes, I am.

23 Q. Are you charging us for the time you spent  
24 locating these articles, newspapers, magazine

1 articles and researching them?

2 A. Yes, I am.

3 Q. What rate are you charging us?

4 A. My rate is \$100 an hour.

5 MR. LANE: I have no further  
6 questions, your Honor.

7 THE COURT: Cross examination?

8 MR. NISSEN: Thank you, your Honor.

9 CROSS EXAMINATION

10 BY MR. NISSEN:

11 Q. Good morning, Mr. Graham.

12 A. Good morning.

13 Q. Mr. Graham --

14 THE COURT: I think Mr. Graham would  
15 like some water. Somebody will get it for you.

16 (Pause.)

17 BY MR. NISSEN:

18 Q. Mr. Graham, when did you first become  
19 interested in the historical information environment  
20 regarding smoking and health?

21 A. The historical information environment  
22 regarding smoking and health?

23 Q. Wasn't that what you've testified to this  
24 morning?

1 A. Yes.

2 I became interested a little more than a  
3 year ago.

4 Q. What stimulated that interest, Mr. Graham?

5 A. This task that I was asked to perform, as  
6 I've indicated earlier, was I accepted it about  
7 thirteen months ago.

8 Q. Mr. Graham, before that time, your primary  
9 interest throughout your professional career has  
10 been basically the New Deal, the issue of national  
11 planning, use planning, 20th Century US political  
12 economy, and the issue of immigration, would that be  
13 fair to say?

14 A. Those are some of my interests, as I have  
15 written across the whole span of American history  
16 from the 1890s to the present.

17 Q. In your resume which you provided under  
18 research areas, those are the areas listed, is that  
19 correct?

20 A. Those sound like research interests that I  
21 might have recently spotlighted.

22 Q. In fact, Mr. Graham, you've listed 130  
23 writings in your resume, and most of these have to  
24 do with the New Deal, national planning and

1 immigration, is that correct?

2 A. Those are some concentrations of mine. I  
3 don't know if it's correct to say "most."

4 Q. Could you tell the jury if there's anything  
5 in your resume, Mr. Graham, that relates whatsoever  
6 to any of the issues in this case?

7 MR. LANE: Objection.

8 THE COURT: Overruled.

9 A. I trust my resume would show publications  
10 on a broad range of subjects from the 1890s to the  
11 present, two or three textbooks which cover a number  
12 of subjects quite beyond the subjects that you  
13 mentioned.

14 BY MR. NISSEN:

15 Q. My question, Mr. Graham, is; are any of  
16 these articles, any of these books, do they have  
17 anything to do with the issues in George Kotler  
18 versus the American Tobacco Company?

19 A. No.

20 Q. Now, who first contacted you about  
21 participating, in coming forward and testifying in  
22 this case?

23 A. Two lawyers.

24 Q. What were their names?

1           A.    Jane Johnson and Allen Pervis.

2           Q.    What were your response, your initial  
3           response to them?

4           A.    My initial response, I had never done this  
5           before, and so my initial response was that they  
6           perhaps wanted someone who did this kind of thing.  
7           I didn't know what -- I had never done this before,  
8           but they -- I agreed to talk with them, I'm  
9           interested in it, and as I talked with them I became  
10           interested in the assignment.

11           Q.    You performed approximately 150 hours of  
12           research in finding the materials that you've  
13           testified to the jury this morning?

14           A.    Yes. I did more research than that.

15           And when I was asked the question about  
16           how much time on this case specifically, that was my  
17           estimate, you heard my estimate. There was more  
18           time that I spent in general looking into the  
19           history of cigarettes and tobacco, a few more hours  
20           to be added to that.

21           Q.    Does that also include, Mr. Graham, the  
22           time that you spent in the courtroom before today,  
23           or is that in addition to the 150?

24           A.    When I made that estimate of 150 hours, I

1 think I was assuming the time that I've spent here.  
2 It would be added to that. It was included.

3 Q. And you've been here in court how many  
4 days, Mr. Graham?

5 A. In this?

6 Q. In court.

7 A. I think parts -- mornings of -- I think two  
8 mornings and a piece of an afternoon.

9 Q. You told the jury that you started your  
10 research in 1950.

11 Did you do any research before 1950?

12 A. Yes, I did.

13 Q. How many hours did you spend on that?

14 A. Well, I can't estimate for sure, but the  
15 predominance of my time was after 1950, once I  
16 determined that that's where this topic lead, and my  
17 guess about the time before, I don't know, 50 hours  
18 perhaps.

19 Q. Did you bill for that time also?

20 A. Yes, I did.

21 Q. And that's above the 150 hours?

22 A. That is. I'm now estimating about a total  
23 of 200.

24 Q. And that would be \$20,000, is that correct?

1           A. That would be.

2           Q. Now, after you met these two lawyers that  
3        you told us about, when did you next have any  
4        contact with lawyers with respect to this case?

5           A. Well, I would go and do research and assess  
6        it, and then after a passage of months I met with  
7        them again, talked about what I had found.

8           Q. Who did you talk with?

9           A. Those -- I talked with those two lawyers by  
10       telephone. And then I recall a meeting with those  
11       two lawyers. I think that was the next step that  
12       happened, as I reconstruct it.

13        Q. Where was that meeting, Mr. Graham?

14        A. I believe that the two lawyers I had  
15       mentioned came to Chapel Hill to my office, and that  
16       three months went by, and that they came again.

17        Q. How long did they spend at your office?

18        A. Oh, an hour or an hour and a half.

19        Q. What firm are those lawyers from?

20        A. Arnold & Porter and Shook, Hardy & Bacon, I  
21       believe, and in the order I gave you their names.

22        Q. Arnold & Porter is a firm in Washington,  
23       D.C.?

24        A. That's correct.

1           Q.    Shook, Hardy & Bacon is in Kansas City?

2           A.    Yes.

3           Q.    Did you ever travel to those two cities?

4           A.    I didn't travel to Kansas City. I  
5           travelled to Washington.

6           Q.    Who did you meet in Washington?

7           A.    In Washington I met with those two lawyers  
8           and other lawyers. I'm going to embarrass myself by  
9           forgetting some names.

10          Q.    Would Tom Silva be one of them?

11          A.    Yes.

12          Q.    He's here in court today, isn't he? Or he  
13          was here.

14                    MR. LANE: I object to this line of  
15          questioning, your Honor.

16                    THE COURT: Let's move on.

17                    MR. NISSEN: All right.

18          BY MR. NISSEN:

19          Q.    How many hours did you spend during that  
20          visit?

21                    MR. LANE: Objection.

22                    THE COURT: Overruled.

23                    THE WITNESS: I'm sorry?

24                    THE COURT: The objection is

1 overruled, so you answer.

2 BY MR. NISSEN:

3 Q. How many hours did you meet with Mr. Silva?

4 A. That was another short meeting, two hours.

5 Q. You flew from -- where were you at that  
6 time?

7 A. Chapel Hill that would be.

8 Q. And you flew from Chapel Hill to  
9 Washington?

10 A. Yes.

11 Q. Do you bill for your time in flying from  
12 Chapel Hill to Washington and flying back?

13 MR. LANE: Objection.

14 THE COURT: Overruled.

15 A. I didn't at that time.

16 BY MR. NISSEN:

17 Q. At some later time?

18 A. At some later time I altered my fee  
19 schedule and did. And you asked me about that time,  
20 and I didn't at that time.

21 Q. Now, how many visits all told did you pay  
22 to lawyers out of your office, Doctor?

23 MR. LANE: Objection.

24 THE COURT: Overruled.

1           A.    There were perhaps two trips to Washington  
2   over the summer.

3           BY MR. NISSEN:

4           Q.    Two trips?

5           A.    That's my recollection. And I took some  
6   trips to research institutions to the library of  
7   Congress just by myself, and I took a trip to Los  
8   Angeles for the library in Los Angeles for myself.

9           Q.    You billed for those?

10          A.    I did bill for those.

11          Q.    You worked in North Carolina for about ten  
12   years?

13          A.    Nine years.

14          Q.    By the way, when did you first meet lawyers  
15   from Chadbourn & Parke who are here in the  
16   courtroom?

17          A.    I can't remember the date exactly. I think  
18   I can remember the month, and it would be,  
19   Chadbourn & Parke, it would be November or early  
20   December.

21          Q.    Did you fly to New York?

22          A.    Yes, I did. I made one visit to New York.

23          Q.    And did you meet someone from Gaston & Snow  
24   in Boston?

1           A.    Much later than that, not even in '89.  It  
2    would be in '90, it would be in January.

3           Q.    Did you fly to Boston to meet someone  
4    there?

5           A.    I did.

6           Q.    How many hours do we have now between these  
7    visits with various lawyers, Mr. Graham?

8           A.    Well, I don't know how to break that out.  
9    I was billing for the meeting time, and I don't  
10   recall.  If you've got four or five meetings there,  
11   you've probably got fifteen hours.

12          Q.    Does that now bring us to 215 or 220 hours?

13          A.    Well, when I made the estimate of 200, I'm  
14   quite comfortable with it being fifteen more or  
15   less.

16          Q.    It could be 220?

17          A.    It could be.  It could be 180.

18          Q.    Did you submit your bill yet?

19          A.    Not my final bill.

20          Q.    Do you charge per diem for your appearances  
21   in court, or do you charge per hour?

22          A.    My fee schedule is per diem.  I charge  
23   \$1,000 a day when I am at court.

24          Q.    And you've been here three separate days or

1 how many?

2 A. I've been here, this is the fifth, I didn't  
3 expect to be here this long.

4 Q. You billed \$5,000 for the five days you've  
5 been here?

6 A. I will. I would rather have been at home,  
7 but I was here.

8 Q. At whose request was it you were here,  
9 yours or the lawyers? Whose request was it that you  
10 be here for five days?

11 MR. LANE: Objection.

12 There's no evidence he was requested to be  
13 here for five days.

14 THE COURT: He said he'd rather be at  
15 home, so I guess somebody asked him to be here.

16 MR. LANE: We didn't know it was  
17 going to be five days, your Honor.

18 THE COURT: Whatever, for the days  
19 that you were here, you were here at the request of  
20 the attorneys, is that right, Mr. Graham?

21 THE WITNESS: Yes, sir, that is  
22 right.

23 BY MR. NISSEN:

24 Q. Doctor, you were here last week as well?

1           A. Unless I am in fatigue and have forgotten,  
2           I came in late Sunday night.

3           Q. Were you here the first week of the trial?

4           A. I can't reconstruct how long the trial has  
5           been going on. I guess I'm a little dizzy with it.

6           THE COURT: Was this your second  
7           visit here to attend the trial, Doctor?

8           THE WITNESS: I believe it was the  
9           second visit.

10           THE COURT: How many days did you  
11           attend the trial on your prior visit?

12           THE WITNESS: Your Honor, I can't  
13           remember. I frankly thought that the trial didn't  
14           start until this week.

15           THE COURT: All right. Let's move  
16           on.

17           MR. NISSEN: I'll move on, your  
18           Honor.

19           THE COURT: Yes.

20           BY MR. NISSEN:

21           Q. Did you meet with an Attorney James  
22           Kearney, by the way, from Webster & Sheffield in New  
23           York?

24           MR. LANE: Objection.

1                   THE COURT: Sustained.

2                   MR. NISSEN: Withdrawn.

3                   BY MR. NISSEN:

4                   Q.    What data was sent to you, Mr. Graham, by  
5                   the lawyers for American Tobacco Company?

6                   MR. LANE: Objection.

7                   I didn't hear the question.

8                   BY MR. NISSEN:

9                   Q.    Was any data sent to you by lawyers for the  
10                   American Tobacco Company?

11                   A.    Yes.

12                   Q.    Please tell us what.

13                   A.    They supplied some materials from  
14                   newspapers, Xeroxes of newspapers, and some Xeroxes  
15                   of magazine articles, both.

16                   THE COURT: Would you say the  
17                   selection of the articles which you have indicated  
18                   was made by the lawyers?

19                   THE WITNESS: No, sir. The selection  
20                   was made by a research firm of historians whom I  
21                   know, two of whom I trained.

22                   THE COURT: Some of these you got  
23                   from the lawyers?

24                   THE WITNESS: Sir, the lawyers hired

1 a research firm known to me and trusted by me, and  
2 the research firm went to the libraries and got  
3 the --

4 THE COURT: Wait a minute. Is this  
5 the stuff that you got from the lawyers?

6 THE WITNESS: Yes, sir.

7 THE COURT: You don't know where they  
8 got it?

9 THE WITNESS: Yes, sir.

10 THE COURT: How do you know that?

11 THE WITNESS: Well, for two -- number  
12 one, they told me that's how they did it, and  
13 secondly I know the research firm and I know the  
14 principal of the research firm, and she confirmed  
15 that is how they did it.

16 THE COURT: The research firm first  
17 submitted the documents to the law firm?

18 THE WITNESS: Yes, sir.

19 THE COURT: Then the law firm  
20 submitted it to you?

21 THE WITNESS: Yes, sir. But I  
22 checked those.

23 THE COURT: Do you know whether the  
24 law firm submitted everything that came from the

1 research firm?

2 THE WITNESS: That being such a good  
3 question, I very carefully set up a process with my  
4 research assistants to check the materials in  
5 libraries to be sure that the search had been  
6 meticulous and careful and no one had omitted or  
7 missed anything.

8 THE COURT: What did they do?

9 THE WITNESS: They went to UCLA and  
10 sat there for hours, and I went personally to the  
11 New York Times and the library of Congress and did  
12 some of this, and we systematically spotchecked  
13 certain months and weeks to be sure that what we  
14 were getting was exactly what was out there.

15 THE COURT: So you duplicated the  
16 work, you say?

17 THE WITNESS: No, sir. That would  
18 have been a waste of -- what I did was I  
19 spotchecked. I didn't go and duplicate it. I tried  
20 to make a systematic spot check of certain months  
21 and certain days.

22 THE COURT: In any case, the route  
23 that this material took came from a research group  
24 hired by the lawyers to the law office and then to

1 you rather than directly to you, is that right?

2 THE WITNESS: That would be the  
3 route, yes, sir.

4 THE COURT: All right.

5 BY MR. NISSEN:

6 Q. The blow-ups here in court, Mr. Graham, did  
7 you do them yourself or did the lawyers have them  
8 done?

9 A. I selected the articles, exercising my  
10 judgment, and the lawyers took care of the physical  
11 blow-up.

12 Q. Did you read Joanne Kotler's five volumes  
13 of testimony given in this case?

14 A. I believe that I read her deposition.

15 Q. Deposition?

16 A. I believe.

17 Q. Did you know that it was taken on five days  
18 and there were five volumes? Did you read all  
19 those?

20 MR. LANE: Objection, your Honor.

21 THE COURT: Overruled.

22 A. I don't believe I read those volumes.

23 BY MR. NISSEN:

24 Q. How about Steven Kotler, do you know his

1 testimony was taken on two days? Did you read  
2 Steven's?

3 A. No.

4 Q. How about David's?

5 A. No.

6 Q. How about Susan's?

7 A. No.

8 Q. Did the lawyers who represent American  
9 Tobacco Company, Mr. Graham, give you copies of  
10 press releases from the Tobacco Industry Research  
11 Committee?

12 MR. LANE: Objection.

13 A. I can't see that far.

14 BY MR. NISSEN:

15 Q. (Handing).

16 (Pause)

17 A. I have never, to the best of my knowledge I  
18 have never seen these.

19 BY MR. NISSEN:

20 Q. Mr. Graham, would it be of any interest to  
21 you to know that the Tobacco Institute sent to  
22 hundreds of newspapers, magazines in this country  
23 over 50 press releases disputing the cause of  
24 cigarette and health problems? Would that be of any

1 interest to you?

2 MR. LANE: Objection.

3 THE COURT: Before you ask the  
4 question there's got to be some evidence that you're  
5 going to be able to present on that point.

6 I'll see you at the side bar.

7 (Side bar conference.)

8 THE COURT: I don't think you can ask  
9 a question assuming the truth of that statement  
10 without either having had some evidence or be about  
11 to present some evidence on the point.

12 MR. NISSEN: Okay.

13 MR. LANE: I think it's outrageous.

14 THE COURT: I don't think it's  
15 outrageous at all. I think these were highly  
16 selected articles, and I think extensive cross  
17 examination -- in fact, if we have to bring him back  
18 next week we'll bring him back.

19 MR. NISSEN: I plan to move to strike  
20 his testimony, your Honor.

21 MR. SHEFFLER: Your Honor, can I ask  
22 one question?

23 I understand that the cross examination  
24 question was whether or not he saw news releases,

1 and then the next question is would it change your  
2 opinion if you knew.

3 THE COURT: Yes. I'm challenging  
4 Plaintiff's counsel to stay that they will represent  
5 that they're going to prove that there were.

6 MR. SHEFFLER: If there's proof that  
7 they actually had the papers it's fine.

8 THE COURT: What?

9 MR. SHEFFLER: That there actually  
10 were press releases and papers as he represents.

11 THE COURT: Sent to the papers.

12 MR. BEZANSON: They were reflected in  
13 the news accounts.

14 MR. SHEFFLER: Your Honor, if it were  
15 not published. The question is phrased with  
16 positive publishers. He's only looked at  
17 newspapers.

18 THE COURT: I understand that. What  
19 is your -- I don't think the Plaintiffs got this  
20 tacked down, so why don't you relax and let me find  
21 out.

22 MR. SHEFFLER: Thank you.

23 MR. NISSEN: There were many, it's  
24 already in evidence by Mr. Leake's deposition that

1       they belong to the tobacco --

2                   THE COURT: The fact that these  
3       things were sent or any number of them were sent is  
4       not in evidence.

5                   What do you have to suggest that it was  
6       put in -- that there was data, what evidence do you  
7       have that these things were sent out?

8                   MR. NISSEN: There will be evidence.

9       There were newspaper articles that reflected --

10                  THE COURT: You have asked him  
11       whether this -- you're asking him --

12                  MR. NISSEN: Whether he was aware.

13                  THE COURT: -- whether he was aware  
14       that these things were sent out. He says no. Now  
15       your question is was it -- a hypothetical question,  
16       if you knew about that would you or something or  
17       other.

18                  MR. SHEFFLER: Exactly.

19                  THE COURT: Without some  
20       representation that you're going to be able to prove  
21       that these releases were, in fact, sent out, I'm not  
22       going to allow the question.

23                  What is your representation as to what  
24       proof you have?

1 MR. NISSEN: The representation is  
2 that these were sent out.

6 MR. NISSEN: We have several  
7 newspaper articles, your Honor.

11 MR. NISSEN: It's not clearly  
12 identified.

13 MR. LANE: I don't think this deals  
14 with newspapers.

15 THE COURT: I don't think you can ask  
16 that question without some foundation.

17 MR. NISSEN: Your Honor, may I ask  
18 what time you plan to go? I don't want to impose on  
19 the jury.

20 THE COURT: How much cross  
21 examination? We may have to bring this one back.

22 MR. LANE: I was hoping to avoid  
23 that.

24 MR. NISSEN: I would say an hour or

1       so.

2                    MR. LANE: I think we've got a real  
3 difficulty. This man does come from San Francisco.

4                    THE COURT: He can come back from San  
5 Francisco, it's not impossible, or he can stay over  
6 the weekend.

7                    MR. LANE: I wasn't thinking of that  
8 so much. He has academic commitments.

9                    MR. SHEFFLER: Can we check with the  
10 witness if he's free Monday morning?

11                  THE COURT: He can come Monday or  
12 Tuesday.

13                  MR. SHEFFLER: Can we check with the  
14 witness?

15                  THE COURT: Yes.

16                  MR. SHEFFLER: Do you want to suspend  
17 at this time or continue?

18                  THE COURT: If you've got an hour of  
19 cross examination and we've got some other evidence  
20 besides, I'm willing to discontinue. I assume there  
21 will be redirect after the cross examination.

22                  MR. LANE: There will, your Honor.

23                  MR. SHEFFLER: We certainly have to  
24 clear up the --

1                   THE COURT: That's going to take some  
2 time.

3                   MR. LANE: I think he's opening right  
4 up to the co-Defendants at this time, and this  
5 fellow obviously spent some time, we've had  
6 co-Defendants here.

7                   THE COURT: I don't know.

8                   MR. SHEFFLER: It's quite  
9 prejudicial.

10                  MR. LANE: We see you've been more  
11 careful on these questions, because that's what that  
12 was all about in the first instance.

13                  THE COURT: He talked to a lot of  
14 lawyers.

15                  MR. LANE: There were a lot of  
16 Defendants, your Honor.

17                  THE COURT: I'm telling you you may  
18 find yourself in difficulty.

19                  MR. LANE: I understand that, your  
20 Honor.

21                  THE COURT: I suggest you be  
22 careful.

23                  Why don't you find out whether he wants to  
24 come back Monday or Tuesday. I prefer he comes

1       Monday, he can stay and enjoy Boston and the  
2       marvelous exhibit at the Museum of Fine Arts.

3                    MR. LANE: We can go one hour now.

4                    THE COURT: We can't do that. I'm  
5       not going to put the pressure on him in cross  
6       examination. This guy is an imminently cross  
7       examined witness in my view, and I'm not going to  
8       put a cap on it.

9                    MR. SHEFFLER: He said if he could,  
10       your Honor, he'd prefer Tuesday, he has commitments  
11       Monday, and he's going to change Tuesday if he has  
12       the time.

13                   THE COURT: Then we'll have our -- I  
14       don't think it's going to change anything about  
15       our --

16                   MR. LANE: Meeting on Monday.

17                   THE COURT: And we'll have him back  
18       on Tuesday and we'll suspend then, and we'll take  
19       up --

20                   MR. INGE: Would the expectation be  
21       then on Tuesday then? We would have arguments and  
22       charge?

23                   THE COURT: No. There's going to be  
24       some testimony, and then you're going to read

1 something? You were going to read something?

2 MR. LANE: We are.

3 THE COURT: So that will take some  
4 time, and I would think that probably arguments and  
5 charge on Wednesday. I think the arguments and  
6 charge in this case deserve morning energy, don't  
7 you?

8 (End of side bar discussion.)

9 THE COURT: Since we've got to come  
10 back we might as well suspend now.

11 Clearly our expectation to finish with the  
12 evidence today will not turn out, and so as I said  
13 to you I had scheduled Monday for a conference with  
14 counsel on the requests for rulings, and we might  
15 just as well do that. The witness can be available  
16 Tuesday rather than on Monday, so we'll come back on  
17 Tuesday and finish with this witness.

18 I understand there is some further  
19 readings from scripture to be added at the end of  
20 that, so that will take up a good deal of Tuesday.

21 I'd like to start fresh with arguments and  
22 charge, so I think we can now reasonable certainty  
23 expect that we'll have arguments and charge on  
24 Wednesday morning, and that you'll get the case for

1       your consideration sometime before noon on  
2       Wednesday.

3           All right? So we are excused now until  
4       Tuesday morning.

5           That gives you a long time to be away and  
6       a long time to be exposed to comments about this  
7       case, both in the press and TV and the radio, or in  
8       and amongst the people that you know. Keep in mind  
9       the warnings that I gave you at the outset, avoid  
10      all contact with that.

11           Thank you very much. Have a good  
12      weekend.

13           (Whereupon, the trial was suspended at  
14      1:00 o'clock p.m.)

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1                   C E R T I F I C A T E

2                   I, Maureen C. O'Connor, Shorthand Reporter, do  
3                   hereby certify that the foregoing transcript, Volume  
4                   14, is a true and accurate transcription of my  
5                   stenographic notes taken on March 3, 1990.

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Maureen C. O'Connor  
Shorthand Reporter

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